



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,806	04/15/2004	Masashi Takahashi	90A 3566	8700

3713            7590            10/19/2005

KODA & ANDROLIA  
2029 CENTURY PARK EAST  
SUITE 1140  
LOS ANGELES, CA 90067

EXAMINER

FIDEI, DAVID

ART UNIT            PAPER NUMBER

3728

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	Applicant(s)	
10/825,806	TAKAHASHI ET AL.	
Examiner	Art Unit	
David T. Fidei	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-8 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-8 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 15 April 2004 is/are: a)  accepted or b)  objected to by the Examiner.
  - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
  - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All b)  Some \* c)  None of:
    - 1.  Certified copies of the priority documents have been received.
    - 2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/8/05.
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 a sealing mechanism for a vessel is recited. This is taken as claim construction practice to be a statement of intended use. The terms "which can be closed by a cap having a plug portion and a seal plug" is a statement of function or a functional limitation. Intended use merely recited in such a manner does not set forth any distinguishing characteristics of the sealing mechanism as most any sealing mechanism is for a vessel. Furthermore a sealing vessel which can be closed by a cap having a plug portion and a seal plug is true of most any conventional vessel of the type disclosed herein; and does not set forth any distinguishing characteristics of the vessel that is recited in the manner recited is not a part of the claimed subject matter. It is not clear what the clear what the scope of the sealing mechanism is.

The body of claim 1 further defines the plug portion, seal plug and vessel, that is functionally inferred; since the plug portion, seal plug and vessel are not a positive parts of the claim. Hence, it would appear the claimed invention only entails a sealing mechanism that can be used with the structure defined in the body of the claim. If the Examiner is apply the broadest reasonable interpretation standard of claim evaluation, then it appears a comparable sealing

Art Unit: 3728

mechanism to that in as much as is claimed could entail a mere set of threads on a sealing mechanism.

At to claim 5, each joint portion has no antecedent basis.

Claim 6 has similar language where method to seal a vessel is recited in the preamble by using cap having a plug portion and a seal portion where preamble structure limitations are set forth that makes it unclear how such structure effects the method limitations. Claim 6 then recites the only method steps as comprising constructing said vessel, charging a first material, a second material then closing the vessel. Applying the previously mentioned standard of claim evaluation where structure is not read into method claims since the structure does not effect the method in an operative sense, it appears a comparable method to that in as much as is claimed could entail construction a conventional mixing vessel, charging a first material in the vessel and closing the vessel by a cap charged with a second material.

Claims 7 and 8 fail to define further method limitations. These claims violate the claim construction procedure of requiring further limitation of claims in claim drafting.

#### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamelin et al (Patent no. 3,326,400). A sealing mechanism for a vessel (3) is disclosed which can be closed by a cap having a plug portion and a seal plug (2), in as much as is claimed.

As to claims 6-8, a method is disclosed the comprises constructing a vessel (3), charging the vessel with a first material (5) and closing the vessel with a cap charged with a second material (4).

Art Unit: 3728

6. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Great Britain document GB 2 371 286 A (provided by applicant). A sealing mechanism for a vessel (16) is disclosed which can be closed by a cap (11) having a plug portion and a seal plug (13). The plug portion has top wall with an outside wall carrying the threads and an inner cylindrical wall defined by that wall which is plugged by member (13). The seal plug has an outer circumferential portion (14) that cooperates with the vessel protruding portion defined by sleeve (12), see sheet 2. The sleeve (12) is also shown in sheet 2 as having a flange portion arranged to fit on a top surface of the opening surface of the vessel.

As to claims 4 and 5, the storage portion is the inside of the vessel where a flange is on the outside of the bottle .

As to claims 6-8, a method is disclosed the comprises constructing a vessel (3), charging the vessel with a first material (5) and closing the vessel with a cap charged with a second material (4).

**REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION**

7. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

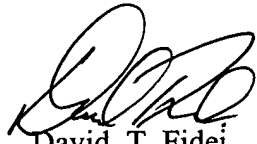
The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

#### Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3728



David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
October 2, 2005